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10 *Attorneys for Defendants*

11 UNITED STATES DISTRICT COURT

12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 RICHARD WUEST, individual and on behalf of)
 14 a class of similarly situated individuals,)

15 Plaintiffs,)

16 v.)

17 CLEARWIRE CORPORATION; CLEARWIRE)
 18 COMMUNICATIONS LLC; CLEAR)
 19 WIRELESS LLC; and DOES 1 through 10,)
 20 inclusive,)

21 Defendants.)
 22

C 12 5061

Case No.

**CLEARWIRE'S NOTICE OF REMOVAL
OF CLASS ACTION COMPLAINT**

**(Removed from San Francisco County
Superior Court, Case No. CGC-12-522668)**

State Action Filed: July 25 2012

DAVIS WRIGHT TREMAINE LLP

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 **PLEASE TAKE NOTICE** that under the Class Action Fairness Act of 2005 ("CAFA"),
4 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants Clearwire Corporation, Clearwire
5 Communications LLC, and Clear Wireless LLC (collectively, "Clearwire") remove this action
6 from the Superior Court of the State of California for the County of San Francisco, Civil Case No.
7 CGC-12-522668, to the United States District Court for the Northern District of California. In
8 support of this Notice of Removal, Clearwire states as follows:

9 INTRODUCTION

10 1. On July 25, 2012, Plaintiff Richard Wuest filed a complaint against Clearwire in
11 the Superior Court of the State of California for the County of San Francisco, Case No. CGC-12-
12 522668, captioned "*Richard Wuest, individual [sic] and on behalf of a class of similarly situated*
13 *individuals v. Clearwire Corporation; Clearwire Communications LL; Clear Wireless LLC; and*
14 *DOES 1 through 10, inclusive.*"

15 2. On August 30, 2012, Mr. Wuest served Clearwire with the Summons and
16 Complaint.

17 3. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because
18 Clearwire filed it within thirty days after completion of service.

19 4. Pursuant to 28 U.S.C. § 1446(a), Clearwire attaches as **Exhibit A** a true and correct
20 "copy of all process, pleadings, and orders served upon [Clearwire]" in the state court action,
21 together with copies of all additional records in the state court file as of September 25, 2012.

22 5. Although Mr. Wuest has also named as defendants DOES 1 through 10, Clearwire
23 does not need the consent of those defendants to remove this action. 28 U.S.C. §§ 1441(a), (b), &
24 1453(b); *Westwood Apex v. Contreras*, 644 F.3d 799, 806 (9th Cir. 2011).

25 FEDERAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

26 6. This action is removable to this Court because federal diversity jurisdiction under
27 28 U.S.C. § 1332 exists over Mr. Wuest's claims under CAFA, 28 U.S.C. §§ 1332(d) & 1453.

28

7. Congress enacted CAFA to enlarge federal jurisdiction over proposed class actions. CAFA provides that a class action against a non-governmental entity may be removed to federal court if: (1) the proposed class consists of 100 or more members; (2) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs; and (3) any member of the proposed plaintiff class is a citizen of a different state than any defendant. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5), (d)(6), & 1453(b). As shown below, this action satisfies all these requirements:

Mr. Wuest Proposes a Class of More than 100 Persons

8. Mr. Wuest brings this case as a proposed class action, Compl. ¶¶ 1, 29–41, and seeks to certify a class under California Code of Civil Procedure § 382, Compl. ¶ 29. This action is therefore a proposed “class action” under 28 U.S.C. § 1332(d)(1)(B), which defines “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.”

9. Mr. Wuest asserts a claim for violation of the California Invasion of Privacy Act, Penal Code §§ 630 *et seq.* (the “Privacy Act”), Compl. ¶¶ 2, 42–47, on behalf of the following proposed class:

All California residents who, at any time during the applicable limitations period preceding the filing of this Complaint through the date of resolution, participated in one or more telephone conversations with a Clear call center from a cellular or cordless telephone located in California and whose calls with one or more of the call centers were recorded by Defendants surreptitiously or without disclosure.

Id. ¶ 29.

10. Mr. Wuest alleges Clearwire has a “policy and practice of recording calls to and from Clear call centers without the consent of all parties,” including calls placed to “telephone numbers 888-888-3133, 877-355-9793, 877-558-8283 and 877-917-4768.” *Id.* ¶ 1; *see also* ¶ 2 (“policy and practice of recording telephone conversations”); ¶ 17 (“practice and policy of recording those calls made to Clear call centers”); ¶ 18 (“Clear call centers are trained to, and instructed to, and did, record telephone calls between Clear and callers, including California

callers”); ¶¶ 44–46 (similar allegations). Mr. Wuest claims this alleged policy and practice of recording calls without disclosure and consent violates the Privacy Act. *Id.* ¶¶ 2–3.

11. Although Clearwire denies liability, its business records show it received at the 888-888-3133 telephone number more than 10,000 phone calls from California customers with California area codes during the statutory limitations period for Mr. Wuest’s claims, i.e., the one-year period from July 25, 2011, to July 25, 2012. *See* Declaration of Joseph Sollner (“Sollner Decl.”) ¶ 2; *Montalti v. Catanzariti*, 191 Cal. App. 3d 96, 98, 236 Cal. Rptr. 231 (1987) (one-year limitations period applies to Privacy Act claim for statutory penalties). Mr. Wuest claims Clearwire, as a matter of “policy and practice,” recorded these calls. *See* Compl. ¶¶ 1–3, 15–18, 27, 44–46. Further, by June 2010, over eighteen percent of California residents lived in households that used only wireless telephones. *See* Nat’l Health Statistics Report, *Wireless Substitution: State-level Estimates From the Nat’l Health Interview Survey, January 2007 – June 2010*, (Apr. 20, 2011), at p. 7, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

12. Although Clearwire contests the propriety of class certification, for purposes of removal, Mr. Wuest’s allegations and the number of calls from California customers with California area codes (more than 10,000) to just one of the telephone numbers (888-888-3133) at issue show the proposed class exceeds 100 members. 28 U.S.C. § 1332(d)(5)(B); *Morey v. Louis Vuitton N. Am., Inc.*, 461 Fed. App’x 642, 644 (9th Cir. 2011) (CAFA’s class-size requirement met where defendant processed “‘substantially in excess of 5,000 credit card transactions’ during the class period, a number that reasonably implies at least 100 separate credit card users”); *Tompkins v. Basic Research LL*, 2008 WL 1808316, at *3 (E.D. Cal. Apr. 22, 2008) (CAFA’s class-size requirement met where complaint alleged class of “‘thousands of persons,” “‘implying a logical minimum of 2,000 class members”).

The Amount in Controversy Exceeds \$5,000,000

13. For purposes of removal under CAFA, “the claims of the individual class members shall be aggregated to determine whether the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). Based on Mr. Wuest’s

1 allegations, this is an “action in which the matter in controversy exceeds the sum or value of
2 \$5,000,000.” *Id.* § 1332(d)(2).

3 14. In determining whether the removing party has met the amount-in-controversy, the
4 Court looks first to the complaint. *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 399 (9th Cir.
5 2010). In the event of an effort to remand, “when the complaint does not contain any specific
6 amount of damages sought, the party seeking removal under diversity bears the burden of
7 showing, by a preponderance of the evidence, that the amount in controversy exceeds the statutory
8 amount.” *Id.* at 397 (citing *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir.
9 2007)). In conjunction with any motion to remand, courts may consider “summary-judgment-type
10 evidence relevant to the amount in controversy at the time of removal.” *Abrego Abrego v. The*
11 *Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (citation omitted). Courts may also consider
12 supplemental evidence later offered by the removing party and not included in the original
13 removal notice. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

14 15. Clearwire denies Mr. Wuest’s allegations of Clearwire’s liability and will oppose
15 certification of the putative class. For purposes of establishing the jurisdictional predicates for
16 removal, however, Mr. Wuest’s allegations and the number of calls from California customers
17 with California area codes to one of the telephone numbers at issue establish that the amount in
18 controversy exceeds \$5,000,000. *See Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,
19 1205-06 (E.D. Cal. 2008) (“The ultimate inquiry is what amount is put ‘in controversy’ by the
20 plaintiff’s complaint, not what a defendant will *actually* owe.”).

21 16. “Where a statutory maximum is specified, courts may consider the maximum
22 statutory penalty available in determining whether the jurisdictional amount in controversy
23 requirement is met.” *Korn*, 536 F. Supp. 2d at 1205. The Privacy Act provides a private right of
24 action for violations of the Act and permits recovery of \$5,000 or three times the amount of actual
25 damages, whichever is greater. Cal. Penal Code § 637.2(a). Mr. Wuest seeks to recover “statutory
26 damages of \$5,000 under Penal Code § 637.2 for every violation of Penal Code § 632.7” and
27 claims “Plaintiff and the Class members ... are entitled to \$5,000 in statutory damages per
28 violation.” Compl. ¶¶ 36(e) & 47. Mr. Wuest further seeks an award of “attorneys’ fees under

California Code of Civil Procedure § 1021.5.” *Id.*, Prayer for Relief ¶ f; *see Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000) (court should include amount of attorney’s fees plaintiffs claim, aggregated on a class-wide basis, in determining whether amount-in-controversy requirement met). Thus, according to Mr. Wuest’s theory of recovery under the Privacy Act, CAFA’s \$5 million amount in controversy requirement would be met if the proposed class contains 1,001 people, each potentially entitled to recover the \$5,000 statutory penalty.

17. Mr. Wuest seeks to recover the \$5,000 statutory penalty and attorneys’ fees on behalf of a class consisting of “[a]ll California residents who ... participated in one or more telephone conversations with a Clear call center from a cellular or cordless telephone located in California and whose calls with one or more of the call centers were recorded by Defendants surreptitiously or without disclosure.” Compl. ¶ 29. And Mr. Wuest alleges Clearwire has a “policy and practice” of recording all calls to all its call centers, including all California calls placed to 888-888-3133. *See id.* ¶¶ 1–3, 15–18, 27, 44–46.

18. Although Clearwire denies liability, its business records show it received at the 888-888-3133 telephone number more than 10,000 telephone calls from California customers with California area codes during the statutory limitations period for Mr. Wuest’s claims, July 25, 2011, to July 25, 2012. *See Sollner Decl.* ¶ 2; *Montalti*, 191 Cal. App. 3d at 98 (one-year limitations period applies to Privacy Act claim for statutory penalties). Because a conservative estimate of the percentage of those calls coming from callers with cellular or cordless phones equals 18%, as explained above, this case therefore puts “in controversy” more than 1,800 calls from California callers to Clearwire. *See Korn*, 536 F. Supp. 2d at 1205–06 (the question under CAFA is the amount “put ‘in controversy’ by the plaintiff’s complaint”). Based on Mr. Wuest’s allegations and the number of California calls to only one of the telephone numbers at issue, the amount in controversy substantially exceeds \$5 million (1,800 times \$5,000 statutory damages per violation equals \$9,000,000). *See id.*; *Morey*, 461 Fed. App’x at 644 (“Because the amount in controversy could be as much as \$1,000 for each subsequent violation, and it is undisputed that there were ‘substantially in excess’ of 5,000 credit card transactions, the preponderance of the evidence shows that the amount in controversy exceeds \$5 million.”); *see also Lewis*, 627 F.3d at

400 (defendant not required to admit liability to remove under CAFA); *Grant v. Capital Mgmt. Serv., L.P.*, 449 Fed. App'x 598, 600 (9th Cir. 2011) (same); *Lippold v. Godiva Chocolatier, Inc.*, 2010 U.S. Dist. LEXIS 47144, at *8 (N.D. Cal. Apr. 15, 2010) ("a removing defendant is not obligated to research, state, and prove the plaintiff's claims for damages") (citation omitted).

19. "The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis*, 627 F.3d at 400. Clearwire denies it violated the Privacy Act. But even if Mr. Wuest could prove a violation, Mr. Wuest has suffered no injury in fact and has no basis for recovery. These issues, however, are not before the Court for resolution at this time. For removal purposes only, Clearwire acknowledges the alleged amount in controversy exceeds \$5 million.

Diversity Exists

20. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert jurisdiction over a class action in which "any member of a class of plaintiffs is a citizen of a State different from any defendant."

21. "[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." *Id.* § 1332(c)(1). Federal courts apply the "nerve center" test to determine a corporation's principal place of business. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186, 1192 (2010). The company's officers or members "direct, control, and coordinate" the company's activities from the "nerve center." *Id.* at 1192. The "nerve center" will "normally be the place where the [company] maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination." *Id.*

22. Defendants Clearwire Corporation and Clearwire Communications LLC are each incorporated in Delaware and headquartered in Washington State. Compl. ¶¶ 5–6. Defendant Clear Wireless LLC is incorporated in Nevada, but like the other defendant entities, is headquartered and has its principal place of business in Washington. *Id.* ¶ 7. For diversity purposes, therefore, the Clearwire defendants are citizens of Delaware, Nevada, and Washington. 28 U.S.C. § 1332(c)(1); *Hertz*, 130 S. Ct. at 1192. Mr. Wuest, by contrast, alleges he is "a

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California resident.” Compl. ¶ 4. Further, the Complaint seeks certification of a class consisting solely of “California residents.” Compl. ¶ 29.

23. Because the parties are diverse, this case satisfies the diversity requirements of 28 U.S.C. § 1332(d)(2)(A).

The Exceptions to Jurisdiction Do Not Apply

24. The exceptions to jurisdiction set forth in 28 U.S.C. § 1332(d)(3) and (4) do not apply because Clearwire is not a citizen of the State in which Mr. Wuest originally filed this action. 28 U.S.C. §§ 1332(d)(3), 1332(d)(4)(A)(i)(II)(cc), 1332(d)(4)(B).

Clearwire Has Satisfied the Remaining Procedural Requirements for Removal

25. The Court has original jurisdiction over this action under 28 U.S.C. § 1332(d). Clearwire may remove this action to this Court under 28 U.S.C. §§ 1441, 1446, and 1453. Because Mr. Wuest filed the state court action in the Superior Court for the County of San Francisco, Clearwire has properly removed the state court action to the Northern District of California, and venue in the San Francisco Division or Oakland Division would be appropriate under 28 U.S.C. §§ 84(a), 1391, and 1446(a), and Civil L.R. 3-2(d).

26. Clearwire will promptly give written notice of the filing of the original Notice of Removal to Mr. Wuest, and file a copy of the Notice of Removal with the Clerk of the Superior Court for the County of San Francisco, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Clearwire requests that the above-described civil action be removed from the Superior Court of the State of California for the County of San Francisco to the United States District Court for the Northern District of California.

Dated: September 28, 2012.

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

By: 

Thomas R. Burke

Attorneys for Defendants

EXHIBIT A

Superior Court of California, County of San Francisco
Case Number: CGC-12-522668
Title: RICHARD WUEST VS. CLEARWIRE CORPORATION et al
Cause of Action: BUSINESS TORT

Generated: Sep-25-2012 3:09 pm PST

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Register of Actions

Date Range: First Date Jul-25-2012 Last Date Sep-25-2012 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence

ALL FILING TYPES

[Submit](#)

Date	Proceedings	Document	Fee
SEP-19-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED SEP-14-2012, PERSONAL SERVICE ON DEFENDANT CLEARWIRE COMMUNICATIONS LLC	View	
SEP-19-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED SEP-14-2012, PERSONAL SERVICE ON DEFENDANT CLEARWIRE CORPORATION	View	
AUG-31-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED AUG-30-2012, PERSONAL SERVICE ON DEFENDANT CLEAR WIRELESS LLC	View	
JUL-25-2012	JURY FEES DEPOSITED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS		150.00
JUL-25-2012	NOTICE TO PLAINTIFF	View	
JUL-25-2012	BUSINESS TORT, COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS AS TO DEFENDANT CLEARWIRE CORPORATION CLEARWIRE COMMUNICATIONS LLC CLEAR WIRELESS LLC DOES 1 THRU 10, INCL. SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC-26-2012 PROOF OF SERVICE DUE ON SEP-24-2012 CASE MANAGEMENT STATEMENT DUE ON DEC-11-2012	View	450.00



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet

Jul-25-2012 9:42 am

Case Number: CGC-12-522668

Filing Date: Jul-25-2012 9:33

Filed by: ELIAS BUTT

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COMPLAINT

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03698876

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CLEARWIRE COPROPRATION; CLEARWIRE COMMUNICATIONS LLC; CLEAR WIRELESS LLC; and DOES 1 through 10, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

RICHARD WUEST, individual and on behalf of a class of similarly situated individuals,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **[AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.]**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Francisco County Superior Court
400 McAllister Street, Room 103, San Francisco, CA 94102

CASE NUMBER
(Número del Caso):

CGC-12-522668

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eric A. Grover (SBN 136080), KELLER GROVER LLP, 1965 Market St., San Francisco, CA (415)543-1305

CLERK OF THE COURT

DATE:
(Fecha)

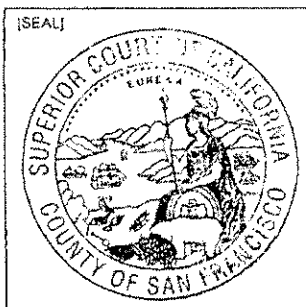
JUL 25 2012

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

RV FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric A. Grover (SBN 136080) KELLER GROVER LLP 1965 Market Street San Francisco, CA 94103 TELEPHONE NO.: (415)543-1305 FAX NO.: (415)543-7861 ATTORNEY FOR (Name): Plaintiff RICHARD WUEST		CM-010 FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> Superior Court of California County of San Francisco <div style="text-align: center; margin: 10px 0;">JUL 25 2012</div> CLERK OF THE COURT BY: Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civil Division		CASE NUMBER: <div style="font-size: 1.2em; font-weight: bold;">CGC-12-522668</div> JUDGE: DEPT:
CASE NAME: WUEST v. CLEARWIRE CORPORATION, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 2
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 24, 2012

Eric A. Grover

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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 Telephone: (818) 986-8900
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ATTORNEYS FOR PLAINTIFF
 RICHARD WUEST

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SAN FRANCISCO**

RICHARD WUEST, individual and on behalf)
 of a class of similarly situated individuals,)

Plaintiff,)

v.)

CLEARWIRE CORPORATION;)
 CLEARWIRE COMMUNICATIONS LLC;)
 CLEAR WIRELESS LLC; and DOES 1)
 through 10, inclusive,)

Defendants.)

Case No.: **CGC-12-522668**

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

BY FAX

SUMMONS ISSUED

FILED

Superior Court of California
 County of San Francisco

JUL 25 2012

CLERK OF THE COURT

BY: [Signature]
 Deputy Clerk

1 and therefore has not provided the Secretary of State with a principal place of business within the state
2 of California. Clearwire Corporation systematically and continuously does business in California and
3 with California residents.

4 6. Clearwire Communications LLC is a subsidiary of Clearwire Corporation and a
5 Limited Liability Company organized under the laws of the State of Delaware with a principal place of
6 business in Kirkland, Washington. Clearwire Communications LLC is not registered with the
7 California Secretary of State and therefore has not provided the Secretary of State with a principal
8 place of business within the state of California. Clearwire Communications LLC systematically and
9 continuously does business in California and with California residents.

10 7. Clear Wireless LLC is a subsidiary of Clearwire Corporation and a Limited Liability
11 Company organized under the laws of the State of Nevada with a principal place of business in
12 Kirkland, Washington. Clear Wireless LLC systematically and continuously does business in
13 California and with California residents. On information and belief Clear Wireless LLC has not
14 identified a principal place of business within California on its most recent Statement of Information
15 filed with the California Secretary of State.

16 8. "Clear" means and refers to Defendants Clearwire Corporation, Clearwire
17 Communications LLC, and Clear Wireless LLC, collectively.

18 9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
19 DOES 1 through 10, inclusive, and therefore sues those defendants by those fictitious names. Plaintiff
20 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
21 informed and believes and on that ground alleges that each of the fictitiously named defendants is
22 responsible in some manner for the occurrences alleged and that Plaintiff's injuries and damages, as
23 alleged, are proximately caused by those occurrences.

24 10. "Defendants" means and refers to Defendants Clearwire Corporation, Clearwire
25 Communications LLC, Clear Wireless LLC, and the fictitiously named defendants, each and all of
26 them.
27
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11. Plaintiff is informed and believes and on that ground alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and on that ground alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that each knew or should have known about and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all Defendants.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under California Penal Code §§ 632.7 and 637.2.

13. This Court has personal jurisdiction over the parties because Defendants Clearwire Corporation, Clearwire Communications LLC, and Clear Wireless LLC continually and systematically have conducted business in the State of California. Likewise, Plaintiff's rights were violated in the State of California and arose out of his contact with Defendants from California.

14. Venue is proper in this Court because Code of Civil Procedure §§ 395 and 395.5 and case law interpreting those sections provide that if a foreign business entity fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county that a plaintiff desires. On information and belief, Defendants Clearwire Corporation, Clearwire Communications LLC, and Clear Wireless LLC are foreign business entities and each has failed to designate a principal place of business in the state of California with the office of the Secretary of State as of the date this Complaint was filed.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

15. Plaintiff is informed and believes and on that ground alleges that the telephone numbers 888-888-3113, 877-355-9793, 877-558-8283, and 877-917-4768 connect callers with call centers

1 providing sales and support services for Clear ("Clear call centers"). On information and belief, the
2 Clear call centers are owned and operated by Defendants.

3 16. Plaintiff is informed and believes and on that ground alleges that Defendants'
4 employees and agents at Clear call centers receive incoming calls from callers including California
5 callers.

6 17. Plaintiff is informed and believes and on that ground alleges that Defendants
7 intentionally have used technology consisting of hardware and/or software to carry out a practice and
8 policy of recording those calls made to Clear call centers.

9 18. Plaintiff is informed and believes and on that ground alleges that Defendants'
10 employees and agents at Clear call centers are trained, and instructed to, and did, record telephone
11 calls between Clear and callers, including California callers.

12 19. In November, 2011, Plaintiff called Clear from his home in California using a cordless
13 telephone. Plaintiff called Clear to discuss the possible provision of wireless internet service to
14 Plaintiff by Clear. Plaintiff decided not to sign up for Clear's services at that time.

15 20. On December 11, 2011, Plaintiff called Defendants from his home cordless telephone
16 in California to order Clear wireless internet equipment and service for his father. During the phone
17 call with Defendants, Plaintiff shared personal and financial information with Defendants, including
18 his name, address, and credit card information.

19 21. On December 11, 2011, less than one hour after placing his order for Clear wireless
20 equipment and services, Plaintiff again called Defendants from his home cordless telephone in
21 California to cancel his order. The cancellation was accepted by Defendants.

22 22. On December 18, 2011 Plaintiff called Defendants from his home cordless telephone
23 in California. Plaintiff called to inform Defendants that despite his cancellation of his order, his credit
24 card had still been charged for Clear's services and he still received wireless internet equipment from
25 Defendants. Defendants' employee or agent stated that Plaintiff would be sent a return shipping label
26 in the mail and that Plaintiff would be refunded upon returning Defendants' equipment.
27
28

1 23. On December 30, 2011 Plaintiff called Defendants four times from California using his
2 cell phone. On at least two of these telephone calls Plaintiff spoke with Defendants agents and/or
3 employees. Plaintiff called to inform Defendants that he still had not received a return shipping label
4 from Defendants to return Clear's equipment so that his refund could be processed.

5 24. On February 23, 2012, Plaintiff called Defendants six more times from California using
6 his cell phone and one more time using his cordless home telephone. On one such occasion, Plaintiff's
7 call was disconnected before he spoke with Defendants' agents and/or employees. Plaintiff called to
8 inform Defendants that his credit card had again been charged for Clear's service, despite the fact that
9 he had returned Clear's equipment and that he wanted a refund.

10 25. On February 24, 2012, Plaintiff called Defendants again from California using his cell
11 phone. Plaintiff called because his credit card still had not been refunded for the unauthorized charges
12 for Clear's services.

13 26. On February 27, 2012, Plaintiff called Defendants one more time from his home in
14 California using his cordless telephone regarding the status of his refund for unauthorized charges
15 made to his credit card.

16 27. During Plaintiff's telephone calls to Defendants, Defendants failed to disclose to
17 Plaintiff, without being asked, that his telephone conversations with Defendants were being recorded.
18 Plaintiff did not give and could not have given consent for the telephone calls to be recorded because
19 he was unaware that Defendants were engaged in that practice during the telephone calls. In February,
20 2012, during several of his telephone calls with Defendants, Plaintiff asked, without being informed at
21 the outset of the calls by Defendants, whether his telephone calls were being recorded. In each
22 instance Defendants stated that Plaintiff's calls were being recorded. Plaintiff is informed and believes
23 and on that ground alleges that callers who called one or more Clears call centers, including those who
24 called Clear by dialing 888-888-3113, 877-355-9793, 877-558-8283, and/or 877-917-4768, were not
25 informed by Defendants or anyone else that their calls were being recorded. Thus, that recording
26 necessarily occurred without the callers' knowledge or consent.
27
28

29. Plaintiff brings this action under California Code of Civil Procedure § 382 on behalf of himself and the class (the "Class") defined as follows:

30. The Class Plaintiff seeks to represent contains numerous members and is clearly ascertainable including, without limitation, by using the Defendants' records and/or Defendants' telephone company's or other toll-free service provider's records regarding calls to telephone numbers for Clear call centers to determine the size of the Class and to determine the identities of individual Class members. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to amend or modify the Class definitions or to add subclasses or limitations to particular issues.

32. Plaintiff's claims are typical of those of the Class, as Plaintiff now suffers from the same violations of the law as other putative Class members. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions to represent him and the Class, and Plaintiff will fairly and adequately represent the interests of the Class.

Numerosity

34. Based on information and belief, the Class consists of at least seventy-five individuals, making joinder of individual cases impracticable.

Typicality

35. Plaintiff's claims are typical of the claims of all of the other members of the Class. Plaintiff's claims and the Class members' claims are based on the same legal theories and arise from the same unlawful conduct, resulting in the same injury to Plaintiff and to all of the other Class members.

Common Questions of Law and Fact

36. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. Those common questions of law and fact include, without limitation, the following:

- a. Whether Defendants have a policy or practice of recording calls made to the Clear call center;
- b. Whether Defendants have a policy or practice of not disclosing to callers whose calls are recorded that their conversations with the Clear call center would be recorded;
- c. Whether Defendants have a policy or practice of not obtaining callers' consent to record telephone calls made to the Clear call center;
- d. Whether Defendants violated California Penal Code § 632.7 by recording telephone conversations between callers and the Clear call center surreptitiously and without disclosure;

- 1 e. Whether Class members are entitled to statutory damages of \$5,000 under Penal
2 Code § 637.2 for every violation of Penal Code § 632.7.

3 Adequacy

4 37. Plaintiff will fairly and adequately represent and protect the interests of the other
5 members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting
6 complex litigation and class actions. Plaintiff and his counsel are committed to prosecuting this action
7 vigorously on behalf of the other Class members and have the financial resources to do so. Neither
8 Plaintiff nor his counsel have any interests adverse to those of the other Class members.

9 Superiority

10 38. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because individual litigation of the claims of all Class members is
12 impracticable and questions of law and fact common to the Class predominate over any questions
13 affecting only individual members of the Class. Even if every individual Class member could afford
14 individual litigation, the court system could not. It would be unduly burdensome to the courts if
15 individual litigation of the numerous cases were to be required. Individualized litigation also would
16 present the potential for varying, inconsistent, or contradictory judgments and would magnify the
17 delay and expense to all parties and to the court system resulting from multiple trials of the same
18 factual issues. By contrast, the conduct of this action as a class action with respect to some or all of
19 the issues will present fewer management difficulties, conserve the resources of the court system and
20 the parties and protect the rights of each Class member. Further, it will prevent the very real harm that
21 would be suffered by numerous putative Class members who simply will be unable to enforce
22 individual claims of this size on their own, and by Defendants' competitors, who will be placed at a
23 competitive disadvantage as their reward for obeying the law. Plaintiff anticipates no difficulty in the
24 management of this case as a class action.

25
26 39. The prosecution of separate actions by individual Class members may create a risk of
27 adjudications with respect to them that would, as a practical matter, be dispositive of the interests of
28

1 other Class members not parties to those adjudications or that would substantially impair or impede
2 the ability of those non-party Class members to protect their interests.

3 40. The prosecution of individual actions by Class members would establish inconsistent
4 standards of conduct for Defendants.

5 41. Defendants have acted or refused to act in respects generally applicable to the Class,
6 thereby making appropriate final and injunctive relief or corresponding declaratory relief with regard
7 to members of the Class as a whole as requested herein. Likewise, Defendants' conduct as described
8 above is unlawful, is capable of repetition, and will continue unless restrained and enjoined by the
9 Court.

10 FIRST CAUSE OF ACTION

11 **Unlawful Recording of Communications against All Defendants**

12 **(Violation of California Penal Code § 632.7)**

13 42. Plaintiff incorporates each allegation set forth above as if fully set forth herein and
14 further alleges as follows.

15 43. Plaintiff participated in numerous telephone calls that he made from California with
16 Defendants' employees or agents at one or more Clear call centers and initiated those calls by dialing
17 the telephone numbers 888-888-3113, 877-355-9793, 877-558-8283 and 877-917-4768. Plaintiff used
18 a cellular or cordless telephone to engage in each of the conversations.

19 44. Plaintiff is informed and believes and on that ground alleges that, at all relevant times,
20 Defendants had a policy and practice of using a telephone system that enabled them to surreptitiously
21 record conversations between Plaintiff and Class members using cellular or cordless telephones and
22 Clear call centers.

23 45. Plaintiff is informed and believes and on that ground alleges that Defendants had and
24 followed a policy and practice of intentionally and surreptitiously recording Plaintiff's and Class
25 members' cellular and cordless telephone conversations with one or more Clear call centers.

26 46. Plaintiff is informed and believes and on that ground alleges that Defendants had and
27
28

1 followed a policy and practice of not advising or warning Plaintiff or Class members that their cellular
2 and cordless telephone communications with Clear call centers would be recorded. Because
3 Defendants did not disclose to Plaintiff or Class members that their calls were being recorded,
4 Defendants did not obtain, and could not have obtained, Plaintiff's or Class members' express or
5 implied advance consent to the recording of those conversations. As a result, Plaintiff and Class
6 members had an objectively reasonable expectation that their calls were not being recorded. That
7 expectation and its objective reasonableness arise, in part, from the objective offensiveness of
8 surreptitiously recording people's conversations, the absence of even a simple pre-recorded message
9 as short as four simple words – "calls may be recorded" – and the ease with which such a message
10 could have been put in place. As the California Supreme Court has stated, "in light of the
11 circumstance that California consumers are accustomed to being informed at the outset of a telephone
12 call whenever a business entity intends to record the call, it appears equally plausible that, in the
13 absence of such an advisement, a California consumer reasonably would anticipate that such a
14 telephone call is not being recorded, particularly in view of the strong privacy interest most persons
15 have with regard to the personal financial information frequently disclosed in such calls." (See
16 *Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4th 95.)
17

18 47. Defendants' conduct as described above violated California Penal Code § 632.7(a).
19 Under Penal Code § 632.7, Plaintiff and Class members therefore are entitled to \$5,000 in statutory
20 damages per violation, even in the absence of proof of actual damages, the amount deemed proper by
21 the California Legislature. Plaintiff and Class members also are entitled to injunctive relief to enjoin
22 further violations.

23 ///

24 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, prays for the following relief:

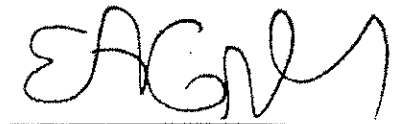
- a. An order certifying the Class and appointing Plaintiff Richard Wuest representative of the Class, and appointing counsel for Plaintiff as lead counsel for the Class;
- b. An order declaring that the actions of Defendants, as described above, violate California Penal Code § 632.7;
- c. A judgment for and award of statutory damages to Plaintiff and the members of the Class pursuant to California Penal Code § 637.2;
- d. A permanent injunction under Penal Code § 637.2 enjoining Defendants from engaging in further conduct in violation of California Penal Code § 630, *et seq*;
- e. Payment of costs of the suit;
- f. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;
- g. An award of pre- and post-judgment interest to the extent allowed by law; and
- h. For such other or further relief as the Court may deem proper.

Respectfully submitted,

Dated: July 24, 2012

KELLER GROVER LLP

By:



Eric A. Grover

Attorneys for Plaintiff and the Proposed Class

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: July 24, 2012

KELLER GROVER LLP

By:



Eric A. Grover

Attorneys for Plaintiff and the Proposed Class

CASE NUMBER: CGC-12-522668 RICHARD WUEST VS. CLEARWIRE CORPORATION et al

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: DEC-26-2012

TIME: 2:00PM

PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet

Aug-31-2012 9:24 am

Case Number: CGC-12-522668

Filing Date: Aug-31-2012 9:24

Filed by: MARYANN E. MORAN

Juke Box: 001 Image: 03746796

PROOF OF SERVICE OF SUMMONS AND COMPLAINT

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03746796

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Carey Been, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO.: (415) 543-1305 ATTORNEY FOR (Name): Plaintiff		POS-010 FOR COURT USE ONLY Superior Court of California County of San Francisco AUG 31 2012 CLERK OF THE COURT BY: <i>May Ann Moran</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000		
PLAINTIFF/PETITIONER: Wuest DEFENDANT/RESPONDENT: Clearwire		
PROOF OF SERVICE OF SUMMONS		CASE NUMBER: CGC-12-522668 Ref. No. or File No.: Clearwire

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, Judicial Mediation Program, [blank] Case Management Statement, ADR Program Information Packet, [blank] Stipulation to ADR

3. a. Party served: Clear Wireless LLC

b. Person Served: CSC - Becky DeGeorge - Person authorized to accept service of process

4. Address where the party was served: 2710 N Gateway Oaks Dr Ste 150
Sacramento, CA 95833

5. I served the party

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 8/30/2012 (2) at (time): 1:50 PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of:

Clear Wireless LLC

under: Other: Limited Liability Company

7. Person who served papers

a. Name: Michelle Dodd
 b. Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 35.95

e I am:

- (3) registered California process server.
 - (i) Employee or independent contractor.
 - (ii) Registration No.: 2011-42
 - (iii) County: SACRAMENTO

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 8/30/2012

Michelle Dodd

(NAME OF PERSON WHO SERVED PAPERS)

Michelle E. Dodd

(SIGNATURE)



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Sep-19-2012 2:39 pm

Case Number: CGC-12-522668

Filing Date: Sep-19-2012 2:39

Filed by: WESLEY G. RAMIREZ

Juke Box: 001 Image: 03770429

PROOF OF SERVICE OF SUMMONS AND COMPLAINT


RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03770429

Instructions:

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POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Title, Bar number and address) Carey Beem, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO.: (415) 543-1305 ATTORNEY FOR (Name) Plaintiff	FOR COURT USE ONLY FILED Superior Court of California County of San Francisco SEP 19 2012 CLERK OF THE COURT  Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000	
PLAINTIFF/PETITIONER, Wuest DEFENDANT/RESPONDENT, Clearwire Corporation.	CASE NUMBER CGC-12-522668
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No. Clearwire

- At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
- I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, ADR Packet, [blank] Case Management Statement, Judicial Mediation Program Packet, [blank] ADR Stipulation

BY FAX

- a. Party served: Clearwire Corporation

b. Person Served: Caroline Little - Corporation Service Company - Person authorized to accept service of process

- Address where the party was served: 300 Deschutes Way SW Suite 304
 Tumwater, WA 98501

- I served the party

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 9/14/2012 (2) at (time): 1:15 PM

- The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of:

Clearwire Corporation

under CCP 416.10 (corporation)

- Person who served papers

- Name: C. Heater
- Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947
- Telephone number: 415-491-0606

d. The fee for service was: \$ 52.95

- I am:
 (1) Not a registered California process server.

- I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 9/17/2012

C. Heater

(NAME OF PERSON WHO SERVED PAPERS)

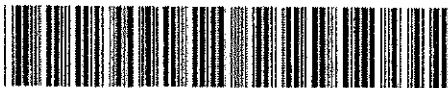
(SIGNATURE)

Form Adopted for Mandatory Use
 Judicial Branch of California POS-010
 (Rev. 08/15/2007)

PROOF OF SERVICE OF SUMMONS

Code of Civil Procedure, § 417.10

CI # 1767:27



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet

Sep-19-2012 2:40 pm

Case Number: CGC-12-522668

Filing Date: Sep-19-2012 2:40

Filed by: WESLEY G. RAMIREZ

Juke Box: 001 Image: 03770431

PROOF OF SERVICE OF SUMMONS AND COMPLAINT


RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03770431

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Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Carey Been, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO.: (415) 543-1305 ATTORNEY FOR (Name) Plaintiff	FOR COURT USE ONLY FILED Superior Court of California County of San Francisco
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000	SEP 19 2012 CLERK OF THE COURT BY:  Deputy Clerk
PLAINTIFF/PETITIONER Wuest DEFENDANT/RESPONDENT: Clearwire Corporation.	CASE NUMBER CGC-12-522668
PROOF OF SERVICE OF SUMMONS	Fil. No. or Filing Clearwire

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, ADR Packet, [blank] Case Management Statement, Judicial Mediation Program Packet, [blank] ADR Stipulation

3. a. Party served: Clearwire Communications LLC

BY FAX

b. Person Served: Caroline Little - Corporation Service Company - Person authorized to accept service of process

4. Address where the party was served: 300 Deschutes Way SW Suite 304
 Tumwater, WA 98501

5. I served the party

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 9/14/2012 (2) at (time): 1:15 PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

c. on behalf of:

Clearwire Communications LLC

under: CCP 416.10 (corporation)

7. Person who served papers

- a. Name: C. Heuter
- b. Address: One Legal - 194-Marin
 504 Redwood Blvd #223
 Novato, CA 94947
- c. Telephone number: 415-491-0606
- d. The fee for service was: \$ 159.95
- e. I am:
 (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 9/17/2012

C. Heuter

NAME OF PERSON WHO SERVED PAPERS

SIGNATURE